

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

**MOUNTAIN EXPRESS OIL COMPANY, et al.,

Debtors. ¹**

Chapter 11

**Case No. 23-90147 (DRJ)

(Jointly Administered)**

**LIMITED OBJECTION OF SCHIERL SALES CORP. TO DEBTOR'S CURE AMOUNT
FOR TRANSITION SERVICES AGREEMENT**

Schierl Sales Corp. ("Schierl"), through its counsel McGuire, Craddock & Strother, P.C., hereby files its Limited Objection to Debtor's Cure Amount for a certain Transition Services Agreement between Debtor Mountain Express Oil Company ("Schierl Cure Objection"), and in support thereof states as follows:

1. On June 28, 2023 Debtors filed a Notice to Counterparties to Potentially Assumed Executory Contracts and Unexpired Leases (Doc. # 0728) ("Cure Notice").

2. The Schedule of Cure Amounts (Exhibit A to the Cure Notice) at page 84 of 102 schedules the following executory contract:

Transition Services Agreement between Schierl Sales Corp. Inc., as Counterparty,
and Mountain Express Oil Company, as Debtor Entity ("MEX") with an "Est.
Cure" of \$0.00.

¹ A complete list of each of the Debtors in these Chapter 11 cases may be obtained on the website of the Debtors' claims and noticing agent at www.kcellc.net/mountainexpressoil. The location of Debtor Mountain Express Oil Company's principal place of business and the Debtors' service address in these Chapter 11 cases is 3650 Mansell Road, Suite 250, Alpharetta, GA 30022.

3. Schierl, as Seller, and MEX, as Purchaser, entered into a certain Purchase and Sale Agreement dated January 27, 2022 ("PSA") for the sale of twenty five (25) convenience stores, certain Subway franchise restaurants thereon, real estate and leases related to the stores, intellectual property, and other assets (collectively, "Purchased Assets").²

4. The sale under the PSA closed on or about March 31, 2022, and simultaneously with the closing, the parties entered into the Transition Service Agreement as of March 31, 2022, as amended by a First Amendment to Transition Services Agreement entered as of April 1, 2022 and a Second Amendment to Transition Services Agreement entered into as of April 1, 2023 (collectively, "Transition Services Agreement").³

5. The Transition Services Agreement provides in relevant part that Schierl shall pay rent in the total of \$181,338.00 per month ("Rent") in consideration for the use of the Purchased Assets after the Second Renewal Term (as defined in the Agreement) (Transition Services Agreement at Section 4(a)).

6. The Transition Services Agreement provides in relevant part that "Except as otherwise provided herein, Operator [Schierl] shall be solely responsible for all costs and expenses associated with the operation of the Businesses and use of the Purchased Assets during the term." (Transition Services Agreement Section 4(b)).

7. However, the Transition Services Agreement further provides that MEX, as Owner, is responsible for Insurance of the Purchased Assets (Section 8), and that:

² The PSA contains Confidential Information and is in the possession of the Debtors, and therefore is not attached hereto.

³ The Transition Services Agreement contains Confidential Information and is in possession of the Debtors, and therefore is not attached hereto.

“Owner shall, at its sole cost and expense, maintain the Purchased Assets in good repair, condition and working order and will furnish any parts and services required thereunder during the term. Provided, Operator may repair any Purchased Assets that must be repaired in a timely manner for the continued operation of the Business and Owner shall promptly reimburse Operator for such repairs that are paid for by the Operator” (Section 13).

The obligations of MEX to reimburse Schierl, as Operator, for the expenditures described in Sections 8 and 13 above collectively “MEX Reimbursable Expenses.”

8. Attached hereto as Exhibit A is a summary of unpaid MEX Reimbursable Expenses⁴ and Rent netted against such expenses as of July 15, 2023, which reports an outstanding net cure amount of \$367,230.72 (“Schierl Cure Amount”). Schierl reserves the right to amend the Schierl Cure Amount for any MEX Reimbursable Expenses incurred after July 15, 2023 and before assumption, if any, of the Agreement.

THEREFORE, Schierl asserts a Cure Amount of \$367,230.72 as of July 15, 2023, and reserves the right to amend such amount for any MEX Reimbursable Expenses incurred after such date.

⁴ Copies of Receipts of MEX Reimbursable Expenses are voluminous and are in the possession of MEX, and therefore are not attached hereto, but can be obtained by contacting counsel to Schierl.

/s/ J. Mark Chevallier [2023-07-10]
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**ATTORNEYS FOR SCHIERL SALES
CORP.**

CERTIFICATE OF SERVICE

I hereby certify that on July 10, 2023, a true and correct copy of the foregoing was electronically filed and served on all parties entitled to receive CM/ECF notifications in the above-captioned proceeding

/s/J. Mark Chevallier [2023-07-10]
J. Mark Chevallier

EXHIBIT A

MEX REIMBURSABLE EXPENSES

Schierl Sales Corp. owes MEX/West Hill Ranch			
Monthly Rent \$181,338 July 2023	\$	181,338.00	
Mo to Month Rent \$181,338 begins in February 2023			
Total	\$	181,338.00	
MEX/West Hill Ranch owes Schierl Sales Corp.			
Menominee MI Mo Rent \$9,750 July (this amount until May 24)	\$	9,750.00	
Management Invoices July 2023 \$11,000 per month	\$	11,000.00	
Various items posted to new A/Rec (see tab called 000-1076)			
-Capital Expenditures	\$	5,466.77	
-Landlord Maintenance	\$	4,756.27	
-PDI Conversion	\$	780.00	
C-Store Computer Expenses (see tab called 001-6165)	\$	137.16	
HVAC/Electrical/Plumbing/Signage/Canopy/Land & Bldg Improvements (including sidewalk/landscaping/parking lots)			
Expenses Jan 22 - May 23 (see Badger Qtrly Monitoring tab)	\$	9,077.55	
Expenses Apr-May (see SSC Maint Expenses tab)	\$	25,534.91	
Expenses May Car Wash (see SSC CW Maint tab)	\$	2,053.94	
C-Store Assets Purchased Mar-Apr expensed to Store (see SSC Assets Expensed)	\$	515.46	
Menominee MI			
Tenant (MEX) shall pay all utility bills, garbage, taxes, any repairs to bldg or equipment (signs included), Landlord pays Property Ins but billed to MEX			
Menominee MI Mo Expenses Mar-Apr (tab called 98 Utilities)	\$	2,603.86	
C-Store Tank Insurance Menominee MI July	\$	109.76	
Subway Fixed Assets	\$	1,165.74	
Subway Assets Purchased Apr-May expensed to Store (see Subway Assets Expensed to Store)	\$	1,181.39	
HVAC/Electrical/Plumbing/Signage/Canopy/Land & Bldg Improvements (including sidewalk/landscaping/parking lots)			
Subway Expenses incurred Apr-May paid on behalf of MEX (see Subway Maint tab)	\$	3,179.11	
Summary Dated May 2023 as reported June 1, 2023 Net Balance	\$	333,807.40	
Total	\$	181,338.00	\$ 411,119.32
Net Balance			\$ 229,781.32
Known Changes that will happen in the next report.			
Update Loyalty Program with PDI software (current is end of life on 6/30/23); signed contract as of 5/25/23.	\$	60,000.00	
anticipated cost to be \$2,400 x 25 stores or \$60,000; no invoice has been received			
Various items posted to new A/Rec (see tab called 000-1076)			
-Capital Expenditures	\$	73,409.01	
-Landlord Maintenance	\$	4,040.39	
Net Balance	\$	367,230.72	